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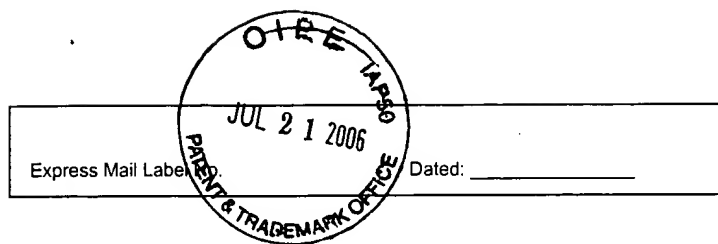
PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 07415/000G062-US0	
	Application Number 09/404,269-Conf. #8234	Filed October 15, 1999	
	First Named Inventor Terrence J. O'hanlon et al.		
	Art Unit 3624	Examiner K. S. Campen	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>47,698</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p> Signature</p> <p>Richard J. Katz Typed or printed name</p> <p>(212) 527-7700 Telephone number</p> <p>July 21, 2006 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			



File No. 07415/000G062-US0
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Terrence J. O'Hanlon et al.

Application No.: 09/404,269

Confirmation No.: 8234

Filed: October 15, 1999

Art Unit: 3624

For: METHOD AND APPARATUS FOR ONLINE
HEALTH MONITORING

Examiner: K. S. Campen

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Concurrent with the filing of a Notice of Appeal, and in accordance with the Pre-Appeal Brief Conference Program, Applicants hereby request a pre-appeal brief review of the rejection mailed April 21, 2006 in the above-identified application. No amendments are being filed with this request.

Claims 2-35 are pending in the application, with claims 2-21, 25-29 and 32-35 having been twice rejected. Claims 22-24, 30 and 31 have been withdrawn from consideration.

In the present application, the claimed invention is directed to a method for compiling health information under computerized control. The method comprises the steps of: (1) establishing a database for storing a plurality of health statuses of a plurality of users, wherein the database is centrally-accessible; (2) receiving, from a user, data corresponding to a health statistic of the user, the data generated by a health monitoring device; (3) determining a health status of the user from the health statistic; (4) storing the health status in the database; and (5) updating a population statistic based on the health status and the plurality of health statuses.

A. Pending Independent Claim 25 Has Not Been Examined on the Merits

The Examiner maintains the rejection of independent claim 25 as being anticipated by U.S. Patent No. 5,832,448 to Brown or U.S. Patent No. 5,966,692 to Langer. (Final Office Action mailed April 21, 2006, page 4.) In the Examiner's Response to Arguments, the Examiner contends that "the recitation 'acoustical' has not been given any patentable weight because the recitation occurs in the preamble." *Id.*, page 6; *see also* Office Action mailed October 6, 2004, page 6; and Office Action mailed September 9, 2005, page 5.

However in response to a non-final Office Action, Applicants amended claim 25 to recite the step of "measuring an **acoustical** cardiovascular monitoring device connected to a computer in response to the request." (Emphasis added.) Amendment filed October 6, 2005. Clearly, the recitation "acoustical" now appears in the body of claim 25, as pending. Therefore, Applicants submit that the Examiner has made a legal error in not considering all the features of amended claim 25.

B. The Examiner is Factually and Legally Erroneous by Relying on Brown

The Examiner maintains the rejection of claims 2-21 and 32-33 as being anticipated by Brown. Office Action mailed April 26, 2006, page 3. In reply to Applicant's arguments submitted October 6, 2005, the "Examiner disagrees and refers to Brown, col. 2, lines 10-40." Office Action mailed April 21, 2006. Here, the Examiner maintains the same position as in the previous Office Action. *See* Office Action mailed April 6, 2005, Response to Argument, page 5. However, the Examiner offers no further insight as to how that portion of Brown relied on by the Examiner anticipates claims 2-21 and 32-33.

Independent claim 2 is directed to a method which includes the step of analyzing a health statistic, "wherein the analyzing step includes comparing data received from the health monitoring device and statistics derived from analysis of the plurality of health statuses [from a plurality of users]." Amendment filed October 6, 2005. In remarks, Applicant submitted that Brown "merely discloses calculating a mean value for each patient from the patient's own set of measurements, without comparison to statistics derived from health statuses of other users." (Emphasis in original.) *See id.* In contrast, Brown discloses calculating a control value for each

patient from the patient's set of measurements. *See* Brown, column 5, line 65 through column 6, line 20; *see also* Amendment filed October 6, 2005, pages 15-16.

Applicants submit that Brown, column 2, lines 10-20 fails to disclose these features of claim 2. Claims 3-21 and 32-33 depend from claim 2, and distinguish over Brown for at least the same reasons as claim 2. Thus, Brown fails to disclose each and every feature of claims 2-21 and 32-33. Therefore, the Examiner has made a factual error in relying on Brown in rejecting claims 2-21 and 32-33. Further, this factual error leads to the legal error of rejecting the claims in view of a reference that does not disclose each and every feature of the claimed invention. Accordingly, Applicants request that the present rejection be withdrawn, and that claims 2-21 and 32-33 be passed to allowance.

The Examiner contends that Brown discloses each and every feature of claim 25. However, Brown discloses using an electrocardiogram, which monitors electrical signals that stimulate a patient's heart muscle. In contrast, an "acoustical cardiovascular monitoring device" acoustically monitors the flow of blood in the arteries and veins. Thus, one device measures the signals causing the heart to beat, and the other device measures the blood flow as a result of the heart beat. An individual can have a proper electrocardiogram result, but still have a partial blockage in an artery go undetected. Thus, Brown fails to anticipate independent claim 25. Claims 26-29 and 35 depend from claim 25, and distinguish over Brown for at least the same reasons. Therefore, Applicants submit that the Examiner has made a factual error in relying on Brown to reject claims 25-29 and 35. Accordingly, Applicants request that the present rejection be withdrawn and that claims 25-29 and 35 be passed to allowance.

C. The Examiner is Factually Erroneous by Relying on Langer

The Examiner maintains the rejection of claims 25-29 and 35 as being anticipated by Office Action mailed April 26, 2006, page 4. Claim 25 recites the step of "measuring an **acoustical** cardiovascular monitoring device connected to a computer in response to the request." (Emphasis added.) Amendment filed October 6, 2005.

Applicants submit that Langer discloses a system for monitoring the heart of a patient comprised of a remote station having **means for generating an electrocardiogram** of the patient, means for detecting predetermined cardiological events in the patient in communication with the generating means and a transmitter for transmitting the electrocardiogram to a central station. Langer, column 1, lines 35-49. *See* Amendment filed October 6, 2005, page 17.

As demonstrated above, an electrocardiogram monitors electrical signals that stimulate a patient's heart muscle. In contrast, an "acoustical cardiovascular monitoring device" acoustically monitors the flow of blood in the arteries and veins. An individual can have a proper electrocardiogram result, but still have a partial blockage in an artery go undetected. Langer fails to disclose an "acoustical cardiovascular monitoring device," as recited in claim 25.

Thus, Langer fails to anticipate independent claim 25. Claims 26-29 and 35 depend from claim 25, and distinguish over Langer for at least the same reasons. Therefore, Applicants submit that the Examiner has made a factual error in relying on Langer to reject claims 25-29 and 35. Accordingly, Applicants request that the present rejection be withdrawn and that claims 25-29 and 35 be passed to allowance.

D. The Examiner is Factually and Legally Erroneous by Finding Both Brown and Langer to Inherently Disclose a "Startup Routine"

Independent claim 25 has been amended to recite "measuring the cardiovascular signal with the cardiovascular monitoring device while a startup routine performed by the computer is ongoing" and "receiving, at the computer after the startup routine, at least a portion of the detected cardiovascular signal of the user." (Emphasis added) *See* Amendment filed October 6, 2005.

The Examiner contends that a "startup routine" is inherent in Brown and Langer, and states that "[a]ll computers when turned on begin a start up routine." *See* Office Action mailed April 21, 2006, Response to Argument, page 6. However, while startup routines are common to

all computers when turned on, neither Brown nor Langer disclose or suggest measuring data from a patient **while the computer startup routine is ongoing**, as is recited in claim 25.

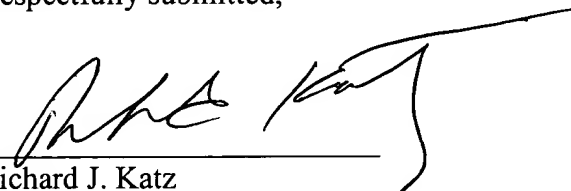
Thus, the Examiner is factually in error by interpreting Applicants' arguments and claim language to be directed to having a computer startup routine, while the basis for distinction over Brown and Langer is "measuring the cardiovascular signal with the cardiovascular monitoring device" as recited in claim 25. Further, the Examiner is legally in error by finding that the claimed feature is inherent in Brown and Langer.

E. Claim 34 Stands Rejected Under 35 U.S.C. § 112

Claim 34 stands rejected under 35 U.S.C. § 112, second paragraph. Specifically, claim 34 depends from canceled claim 1. Accordingly, Applicants respectfully request that an Examiner's amendment be entered changing the dependency of claim 34 from claim 1 to claim 2.

Dated: July 21, 2006

Respectfully submitted,



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